

## PACIFIC FISHERY MANAGEMENT COUNCIL

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December 13, 2004

Mr. Daniel J. Basta, Director  
National Marine Sanctuary Program  
National Ocean Service  
Silver Spring, MD 20910

Re: Response to Request for the Pacific Fishery Management Council to Prepare Fishing Regulations

Dear Mr. Basta:

This letter is in response to your letter of October 22, 2004 formally providing the Pacific Fishery Management Council (Council) the opportunity to prepare draft fishing regulations for Monterey Bay National Marine Sanctuary (MBNMS) and Cordell Bank National Marine Sanctuary (CBNMS). As you note, the National Marine Sanctuary Act (NMSA) provides Regional Fishery Management Councils 120 days to respond to a NMSA Section 304(a)(5) request. In a second letter, you also request Council input about proposed changes to Sanctuary Designation Documents for MBNMS, CBNMS, and Gulf of the Farallones National Marine Sanctuary (GFNMS). This NMSA Section 304(e) request identifies a 60-day deadline for a response from the Council. Based on information provided to the Council by Sanctuary staff at our September 2004 and November 2004 meetings, the Council is requesting extension of these deadlines to accommodate the Council's meeting schedule. Specifically, the Council is formally requesting extension of the Designation Document review and fishing regulation drafting timelines to accommodate the March and April 2005 Council meetings. The Council requests these extensions to provide opportunity for the Council and its advisory bodies to review and comment on written analyses of proposed actions, and because the comment periods would end before the next Council meeting.

This past year, the Council worked closely with the three central California coast sanctuaries (GFNMS, CBNMS, and MBNMS) during their joint Sanctuary Management Plan Review process (JMPR process). On several occasions, sanctuary program staff briefed the Council on the JMPR process, including specific actions being contemplated that could require regulation of fishing activities within a Sanctuary. The Council very much appreciates the cooperative spirit of the representatives of these three central coast Sanctuaries; it has resulted in what we view as positive, successful working relationship.

At the September 2004 Council meeting, Sanctuary staff briefly described for the Council and our advisors proposed management measures, and noted that implementation of these measures would require management of fishing activities. Hence, Sanctuary staff indicated a formal consultation package, including requests for Council action would be provided in advance of the November

Council meeting. At the time, the Council was informed that the NMSA mandated a 120-day period for a Council to respond to a request to develop fishing regulations. Sanctuary staff emphasized that the 120-day time line (if it started at the November 2004 meeting) would not match up with the Council meeting schedule. Therefore, Sanctuary staff indicated they would anticipate a response from the Council at the March 2005 Council meeting.

Prior to the November 2004 Council meeting, Sanctuary staff indicated their intent to provide materials to Council staff in time for inclusion in the November Briefing Book. This would allow for the typical Council process, whereby all involved are able to read the material prior to the Council meeting. The advisors are then able to prepare written statements and present them to the Council at the meeting, and the Council considers the advisory body statements and public testimony prior to making an informed decision. However, the materials were not received until after the Briefing Book deadline, which resulted in the Council and its advisors not receiving the material until the start of the Council meeting. This prevented Council advisory bodies and the Council from having a sufficient opportunity to review and consider this information in advance of the meeting.

At the November 2004 Council meeting, the Council again expressed appreciation for the cooperative efforts of the Sanctuaries, but noted the impacts of written analyses not being available in advance of the November meeting and the lengthy time before the next Council meeting. In response to the Council's concerns, Sanctuary staff indicated willingness to accommodate an extension of the 120-day and 60-day deadlines to better fit the Council schedule. These statements comport with Sanctuary staff statements from September 2004.

Specific to each Sanctuaries' requests for Council action, the Council reached different conclusions for the actions proposed by CBNMS and those proposed by MBNMS. For CBNMS, under the extended deadline the Council intends to review the Sanctuary's request for the Council to develop fishing regulations to protect benthic habitat and invertebrates within the 50 fathom isobath surrounding Cordell Bank. To provide this protection, the Sanctuary is proposing to restrict certain fishing activities in this area. The Council is also prepared to review and comment on potential changes to the CBNMS Designation Document, which would be necessary to implement the proposed measures.

For MBNMS, the Council is formally requesting more time for the Council to provide comment on only the Designation Document changes. The Council requests this extension to provide opportunity for the Council and its advisory bodies to review and comment prior to a Council decision. Specific to the request for development of fishing regulations, the Council is aware that under the NMSA a proposed designation (in this case extension of MBNMS boundary to include Davidson Seamount) should be accompanied by proposed regulations to implement the proposal. However, the Council strongly believes it is premature to consider drafting fishing regulations under authority of the NMSA for an area (Davidson Seamount) that is not currently within a National Marine Sanctuary. Notably, many Sanctuary designations (including geographic boundaries and restrictions on activities) have been established without NMSA fishing regulations that go beyond those in place by State or Council action. Specifically, MBNMS was officially designated in 1992; this designation did not include authority to regulate fishing activities. Since effective Sanctuary protection has been in place for a dozen years without NMSA specific fishery regulations, it seems feasible that consideration of the inclusion of Davidson Seamount within MBNMS could proceed absent fishing regulations that go beyond those already in place.

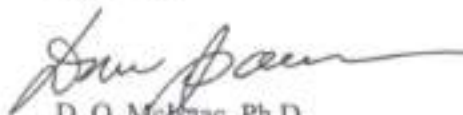
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Finally, the Council's request to separately consider the proposed MBNMS boundary change and proposed regulation of fishing activity does not mean the Council is opting out of our NMSA mandated role to develop fishing regulations. The Council welcomes the opportunity to consider development of fishing regulations for the Davidson Seamount area after the area has been added to the Sanctuary.

Thank you for your attention to these matters. To reiterate, the Council is formally requesting extension of the Designation Document review 60-day deadline (for CBNMS, MBNMS, GFNMS) and fishing regulation drafting 120-day deadline (for CBNMS) to accommodate the March and April 2005 Council meetings. The Council requests these extensions to provide opportunity for the Council and its advisory bodies to review and comment on written analyses of proposed actions, and because the comment periods would end before the next Council meeting.

If you have any questions about our request or need additional information, please don't hesitate to contact me.

Sincerely,



D. O. McIsaac, Ph.D.  
Executive Director

DAW:cke

c: Council Members  
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Regional Fishery Management Council Executive Directors  
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